

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Patrick S. Pump; Mickey L. Ward

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 40A-0345-R-2022
40A 207601-00
40A 207602-00
40A 207606-00
40A 207607-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 207601-00, 40A 207602-00, 40A 207606-00, and 40A 207607-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received an issue remark. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by

Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Each above-captioned claim received an objection filed by the United States of America (Bureau of Land Management).

The Court consolidated these claims into Water Curt case 40A-0345-R-2022 on April 22, 2022. The consolidation order scheduled an initial status conference and required the parties to attend. As a result of discussions during the status conference, the Court set a settlement deadline. On July 28, 2022, the United States filed a withdrawal of its objections.

FINDINGS OF FACT

1. Each above-captioned claim appeared with the following issue remark:

THE TIMELY FILED OBJECTION OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

2. Claim 40A 207606-00 also appeared with the following issue remark:

POINT OF DIVERSION NO. 6 DOES NOT APPEAR TO BE STANDARDIZED. THE HEADGATE APPEARS TO BE IN THE SWNWNW SEC 7 TWP 7N RGE 12E WHEATLAND COUNTY.

3. Claim 40A 207607-00 also appeared with the following issue remark:

POINT OF DIVERSION NO. 5 DOES NOT APPEAR TO BE STANDARDIZED. THE HEADGATE APPEARS TO BE IN THE SWNWNW SEC 14 TWP 7N RGE 11E MEAGHER COUNTY.

4. The United States withdrew its objections to these claims on July 28, 2022.

Counsel for the United States indicates the objections are moot due to change authorizations granted for the water rights in this case.

5. The points of diversion of Claims 40A 207606-00 and 40A 207607-00 should be modified as described in each relevant issue remark as the proposed descriptions are located on the claimed source.

6. The issue remarks should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R.

5. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

6. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Patrick S. Pump
PO Box 245
Two Dot, MT 59085

Mickey L. Ward
PO Box 208
Two Dot, MT 59085

Service Via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-0476
Jennifer.Najjar@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 207601-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PATRICK S PUMP
PO BOX 245
TWO DOT, MT 59085 0245

MICKEY L WARD
PO BOX 208
TWO DOT, MT 59085

Priority Date: JUNE 15, 1881
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.67 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 507.50
***Source Name:** LITTLE ELK CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
2		SESWSE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
3		SWSENE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
4		SESWNE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
5		SWNWNW	14	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						

6 SWNWNW 7 7N 12E WHEATLAND

*Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

*Period of Use: MARCH 1 TO NOVEMBER 30

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	248.00		N2	12	7N	11E	MEAGHER
2	0.50		N2N2NWSE	12	7N	11E	MEAGHER
3	59.00		SW	12	7N	11E	MEAGHER
4	41.00		S2S2	6	7N	12E	WHEATLAND
5	159.00		N2	7	7N	12E	WHEATLAND
Total:	507.50						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

207601-00

207602-00

207606-00

207607-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 207602-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PATRICK S PUMP
PO BOX 245
TWO DOT, MT 59085 0245

MICKEY L WARD
PO BOX 208
TWO DOT, MT 59085

Priority Date: JUNE 10, 1883
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.67 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 507.50
***Source Name:** LITTLE ELK CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
2		SESWSE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
3		SWSENE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
4		SESWNE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
5		SWNWNW	14	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						

6 SWNWNW 7 7N 12E WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

***Period of Use:** MARCH 1 TO NOVEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	248.00		N2	12	7N	11E	MEAGHER
2	0.50		N2N2NWSE	12	7N	11E	MEAGHER
3	59.00		SW	12	7N	11E	MEAGHER
4	41.00		S2S2	6	7N	12E	WHEATLAND
5	159.00		N2	7	7N	12E	WHEATLAND
Total:	507.50						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

207601-00

207602-00

207606-00

207607-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 207606-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PATRICK S PUMP
PO BOX 245
TWO DOT, MT 59085 0245

MICKEY L WARD
PO BOX 208
TWO DOT, MT 59085

Priority Date: MAY 18, 1881
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.67 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 507.50
***Source Name:** LITTLE ELK CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
2		SESWSE	11	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
3		SWSENE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
4		SESWNE	12	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
5		SWNWNW	14	7N	11E	MEAGHER
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						

6 SWNWNW 7 7N 12E WHEATLAND

*Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

*Period of Use: MARCH 1 TO NOVEMBER 30

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	248.00		N2	12	7N	11E	MEAGHER
2	0.50		N2N2NWSE	12	7N	11E	MEAGHER
3	59.00		SW	12	7N	11E	MEAGHER
4	41.00		S2S2	6	7N	12E	WHEATLAND
5	159.00		N2	7	7N	12E	WHEATLAND
Total:	<u>507.50</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

207601-00

207602-00

207606-00

207607-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 207607-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PATRICK S PUMP
PO BOX 245
TWO DOT, MT 59085 0245

MICKEY L WARD
PO BOX 208
TWO DOT, MT 59085

Priority Date: JUNE 11, 1890
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate:

CASE NO. 1862 WHEATLAND COUNTY DECREES ALL SURPLUS WATERS OF THIS SOURCE OVER AND ABOVE THE FIRST FOUR RIGHTS. THIS RIGHT IS DECREED 33.33% OF THOSE SURPLUS WATERS.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 507.50

***Source Name:** LITTLE ELK CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	11	7N	11E	MEAGHER
*Period of Diversion:	MARCH 1 TO NOVEMBER 30					
Diversion Means:	HEADGATE					
2		SESWSE	11	7N	11E	MEAGHER
*Period of Diversion:	MARCH 1 TO NOVEMBER 30					
Diversion Means:	HEADGATE					
3		SWSENE	12	7N	11E	MEAGHER
*Period of Diversion:	MARCH 1 TO NOVEMBER 30					
Diversion Means:	HEADGATE					
4		SESWNE	12	7N	11E	MEAGHER
*Period of Diversion:	MARCH 1 TO NOVEMBER 30					
Diversion Means:	HEADGATE					
5		SWNWNW	14	7N	11E	MEAGHER

***Period of Diversion:** MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

6 SWNWNW 7 7N 12E WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

***Period of Use:** MARCH 1 TO NOVEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	248.00		N2	12	7N	11E	MEAGHER
2	0.50		N2N2NWSE	12	7N	11E	MEAGHER
3	59.00		SW	12	7N	11E	MEAGHER
4	41.00		S2S2	6	7N	12E	WHEATLAND
5	159.00		N2	7	7N	12E	WHEATLAND
Total:	507.50						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

207601-00

207602-00

207606-00

207607-00